

REMARKS

Response to Amendment

The Examiner objected to the declaration, under 37 CFR 1.1.31, filed on 20 July 2005 as being ineffective to overcome the Pieffer reference. The evidence submitted was insufficient to establish location as to where the invention was constructed. The applicant has made the necessary corrections to the 1.131 affidavit, in particular applicant has stated in ¶ 2 that all of the work related to the present application has been performed in the United States.

Claim Rejections

The Examiner has rejected claims 1-3, 5, 30, and 31, as being unpatentable under 35 U.S.C. 102(e) as being anticipated by Pieffer. According to 37 CFR 1.131 when the reference is not a statutory bar, applicant can overcome the rejection by swearing back of the reference through submission of an affidavit. In light of the correction to the applicants 1.131 affidavit, the Pieffer reference has been successfully antedated and no longer qualifies as prior art under 35 U.S.C. 102(e).

The Examiner has further rejected claims 1-3, 5, 30 and 31, as being unpatentable under 35 U.S.C. 102 (b) as being anticipated by Holcomb.

Regarding claims 1-3, 5, 30 and 31, applicant has cancelled these claims. Thus, rendering the Examiners rejection moot with respect to the above claims.

In addition, applicant has added new independent claims 37, 38, 42, 46 and new dependent claims 39, 40, 41, 43, 44, and 45. These claims are based on old claims 1, 6, 7, 9, 13, 14, 15, and 32

Regarding new independent claim 37, applicant has combined old independent

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claim 1 and old dependent claim 6. Holcomb does not teach or suggest of a base comprising a top member and a bottom member, and a sidewall connecting the top and bottom members wherein the magnet is between the top member and the bottom member.

Regarding new independent claim 38, applicant has combined old independent claim 1 and old dependent claim 7. Holcomb does not teach or suggest that the magnet used is a ring magnet.

Regarding new independent claim 42, applicant has combined old independent claim 1 and old dependent claim 9. Holcomb does not teach or suggest of a stopper comprising a top member and a plug member extending therefrom, with the plug member being shaped so as to be able to be inserted into an orifice located on the container.

Regarding new independent claim 46, applicant has combined old independent claim 30 and old dependent claim 32. Holcomb does not teach or suggest of a magnet located in a stopper in which the magnetic fields produced by the magnet are aligned such that a circular magnetic force is formed.

Regarding new dependant claims 39, 40, 41, 43, 44, and 45, these claims further limit the independent claims they depend on, and as such should be allowable.

The Examiner has rejected claims 4, 6-16, 23-29, and 32-34, under 35 U.S.C. 103(a) for obviousness. In particular Examiner has rejected the above claims as being unpatentable over Pieffer in view of Yu. As stated above because the applicant has submitted the corrected 1.131 affidavit, this rejection should be rendered moot.

CONCLUSION

The applicant has successfully corrected the 1.131 affidavit. In doing so the Pieffer reference is no longer qualifies as prior art for a 102(a) or 103 rejection. In

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addition, the applicant has amended the claims to better exemplify what the applicant considers to be his invention. According to MPEP 2131 "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." Based on the above arguments submitted by the applicant, Holcomb no longer qualifies as prior art.

For the foregoing reasons, Applicant's claims as amended are patentable over the cited prior art and the application should be in condition for allowance.

Respectfully submitted,



Thomas A. O'Rourke

Reg. No.: 27,665

BODNER & O'ROURKE, L.L.P.

425 Broadhollow Road

Melville, New York 11747

(631) 249-7500